IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

WEB TELEPHONY, LLC	§	
	§	
	§	
Plaintiff,	§	
	§	**CIVIL ACTION NO. 2:07cv85**
v.	§	
	§	
AT&T, CORP.., et al	§	
	§	
Defendant.	§	
	§	

NOTICE OF SCHEDULING CONFERENCE, PROPOSED DEADLINES FOR DOCKET CONTROL ORDER, AND DISCOVERY ORDER

The Court, *sua sponte*, issues this Notice of Scheduling Conference and Proposed Deadlines for Docket Control Order Containing Discovery Order.

Notice of Scheduling Conference

Pursuant to FED. R. CIV. P. 16 and Local Rule CV-16, the Scheduling Conference in this case is set for **Monday, October 1, 2007 at 10:00 a.m.**[1] The parties are directed to meet and confer in accordance with FED. R. CIV. P. 26(f) no later than September 10, 2007, twenty-one (21) days before the conference.

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[1] The hearing will be conducted at the Federal Courthouse in Marshall, Texas.

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Pre-Scheduling Conference Meeting

When the parties confer with each other pursuant to Rule 26(f), in addition to the matters covered by Rule 26(f), the parties shall attempt in good faith to agree on certain matters, including deadlines for a proposed Docket Control Order (see Example Docket Control Order Attached), and shall file with the Court a joint written report outlining their proposals at least forty-eight (48) hours prior to the Rule 16 Scheduling Conference.

The parties must include the following matters in the joint conference report and be prepared to discuss such matters at the Scheduling Conference:

(1) A factual and legal description of the case which also sets forth the elements of each cause of action and each defense;

(2) The date the Rule 26(f) conference was held, the names of the those persons who were in attendance, and the parties they represent;

(3) A list of any cases that are related to this case and that are pending in any state or federal court with the respective case number and court;

(4) The expect length of trial;

(5) Whether the parties jointly agree to trial before a magistrate judge;

(6) Whether a jury demand has been made;

(7) Proposed modification of the deadlines in the Proposed Docket Control Order set forth in the attached Appendix A;

(8) The need for and modification of the proposed specific limits on discovery relating to claim construction, including depositions of witnesses, including expert witnesses, which are included herein;

(9) The entry of a Protective Order;

(10) The appointment of a Technical Advisor or Special Master;

(11) The number of claims being asserted;

(12) The possibility of early mediation; and

(13) Local Rules pertaining to attorney misconduct.

Proposed Deadlines for Docket Control Order

The proposed deadlines for the Docket Control Order as well as the disclosure rules and discovery in patent case, set forth in the attached Appendix A, shall be discussed at the Scheduling Conference. The Court will not modify the trial date except for good cause shown.

General Discovery Order

After a review of the pleaded claims and defenses in this action and in furtherance of the management of the Court's docket under FED. R. CIV. P. 16, it is ordered as follows:

1. **Protective Orders:** Upon the request of any party, the Court shall enter a Protective Order, which is agreed to by all parties. If the parties are unable to come to agreement, they shall submit competing motions detailing specific areas of both agreement and disagreement as well as a proposed order. Any party may oppose the issuance of or move to modify the terms of the Protective Order for good cause.

2. **Discovery Limitations:** At the Scheduling Conference, the Court shall also discuss limiting discovery in this action to the disclosures provided for in the Proposed Docket Control Order together with 30 interrogatories per side, 100 requests for admissions per side, 100 hours for depositions of fact witnesses per side (The deposition of each witness shall be limited to a maximum of seven (7) hours, which may be increased by no more than one (1) hour upon agreement of the parties. However, each 30(b)(6) witness may be deposed for a maximum of ten (10) hours), the deposition of all expert witnesses shall be limited to a maximum of ten (10) hours per a witness. "Side" means a party or a group of parties with a common

interest. Any party may move to modify these limitations for good cause. All deposition to be read into evidence or shown in court as part of the parties' case-in-chief shall be **EDITED** so as to exclude all unnecessary, repetitious, and irrelevant testimony; **ONLY** those portions which are relevant to the issues in controversy shall be read into evidence or shown in open court. Parties **SHALL** limit total deposition time to no more than one hour per deposition to be read or shown in court.

3. **Privileged Information:** There is no duty to disclose privileged documents or information. Once the parties have exchanged privilege logs, any party may move the Court for an order compelling the production of any documents or information identified on any other party's privilege log. If the parties have no disputes concerning the privileged documents or information, then the parties shall inform the Court of that fact.

4. **Duty to Supplement:** After disclosure is made pursuant to the Court's Docket Control Order, each party is under a duty to supplement or correct its disclosures immediately if the party obtains information on the basis of which it knows the information disclosed was either incomplete or incorrect when made, or is no longer complete or true.

5. **Disputes:** Counsel are directed to contact the chambers of the undersigned for any "hotline" disputes before contacting the Discovery Hotline provided by Local Rule CV-26(f). If the undersigned is not available, the parties shall proceed in accordance with Local Rule CV-26(f).

Other General Rules

1. **No Excuses:** A party is not excused from the requirements of this Discovery Order or the Court's Docket Control Order because it has not fully completed its investigation of the case, or because it challenges the sufficiency of another party's disclosures, or because another party has not made its disclosures. Absent Court order to the contrary, a party is not excused from disclosure because there are pending motions to dismiss, to remand, or to change venue.

2. **Local Rule CV-7(d):** The parties are directed to Local Rule CV-7(d) which provides, in part, that "[i]n the event a party fails to oppose a motion in the manner prescribed herein, the court will assume that the party has no opposition." Local Rule CV-7(e) provides that a party opposing a motion has **15 days** in which to serve and file supporting documents and briefs, **after which the Court will consider the submitted motion for decision.**

3. The Court will refuse to entertain any discovery motion filed after the date of this Order unless the movant advises the Court within the body of the motion that counsel for the parties have first met and conferred **in person, with local counsel present,** in a good faith effort to resolve the matter. This provision applies only to discovery matters and requires only that counsel from those parties that are in disagreement to meet in person. Lastly, this meet and confer provisions only requires the presence of such counsel having authority to resolve the matter in dispute. The following excuse will not warrant a continuance nor justify a failure to comply with the discovery deadline: The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case.

4. The parties shall make a good faith effort to adhere to page limits provide by the Local Rules and shall not exceed such page limits without first receiving leave of court upon a showing of good cause. Any effort to avoid these page limits, *e.g.* submitting each issue raised on summary judgment in a separate motion, shall be closely scrutinized.

IT IS SO ORDERED.

SIGNED this 30th day of August, 2007.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

COMPANY A,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. X:XX-CV-XXX (DF)**
	§	
COMPANY B,	§	
	§	
Defendant.	§	
	§	

EXAMPLE DOCKET CONTROL ORDER

STEP	ACTION	RULE	DATE DUE
1	Initial Case Management Conference	Patent L.R. 2-1 FRCP 26(f)	
2	Patentee serves Disclosure of Asserted Claims and Preliminary Infringement Contentions of a reasonable number of representative claims	Patent L.R. 3-1	No later than 10 days after the initial management conference.
3	Patentee makes Document Production Accompanying Disclosure	Patent L.R. 3-2	Same as 2
4	Initial Disclosures	FRCP 26(a)(1)	At or within 14 days of initial management conference

5	Accused Infringer serves Preliminary Invalidity Contentions	Patent L.R. 3-3	Not later than 45 days after Patentee serves preliminary infringement contentions
6	Accused Infringer makes Document Production Accompanying Preliminary Invalidity Contentions	Patent L.R. 3-4	Same as 5
7	All parties make Exchange of Proposed Terms and Claim Elements for Construction	Patent L.R. 4-1(a)	Not later than 10 days after Accused infringer serves preliminary invalidity contentions
8	Patentee shall limit the number of asserted claims to no more than ten (10) and notify the accused infringer and Court		After 7 but before 9
9	All parties meet and confer to discuss list of Proposed Terms and Claim Elements for Construction	Patent L. R. 4-1(b)	After 8 but before 11
10	Deadline for early mediation at the Parties' request		
11	All parties make Exchange of Preliminary Claim Constructions and Extrinsic Evidence	Patent L. R. 4-2	Not later than 20 days after 7
12	All parties meet and confer to discuss Preliminary Claim Constructions and Extrinsic Evidence	Patent L. R. 4-2©)	After 11 but before 13

13	All parties jointly file Joint Claim Construction and Prehearing Statement	Patent L. R. 4-3	Not later than 60 days after 5
14	Deadline to join other parties without leave of Court, which shall be at least 60 days before the deadline for filing dispositive motions		Same as 13
15	Deadline to file amended pleadings without leave of Court, which shall be at least 30 days before the deadline for dispositive motions		
16	Completion of Claim Construction Discovery	Patent L. R. 4-4	Not later than 30 days after 13
17	Patentee files opening claim construction brief	Patent L. R. 4-5(a)	Not later than 45 days after 13
18	Accused Infringer files responsive claim construction brief	Patent L. R. 4-5(b)	Not later than 14 days after 17
19	Patentee files reply brief on claim construction	Patent L. R. 4-5©)	Not later than 7 days after 18
20	ONLY WITH LEAVE OF COURT Accused infringer files sur-reply brief on claim construction		Not later than 7 days after 19
21	Parties file Join Claim Construction Chart	Patent L. R. 4-5(d)	At least 10 days before Claim Construction Hearing

22	Pre-hearing Conference and technical tutorial if necessary		The day before the Claim Construction Hearing or in combination with the Claim Construction hearing
23	Claim Construction Hearing	Patent L. R. 4-6	At least 2 weeks after 20
24	Court's Claim Construction Ruling		On or about (3 weeks after 23) subject to the Court's scheduling and/or use of a technical advisor **<DO NOT PUT IN A DATE>**
25	Patentee makes Final Infringement Contentions	Patent L. R. 3-6(a)	On or about 30 days after claim construction ruling **<DO NOT PUT IN A DATE>**
26	Accused Infringer serves Preliminary Unenforceability Contentions		On or about 40 days after claim construction ruling **<DO NOT PUT IN A DATE>**
27	Accused Infringer makes Document Production Accompanying Preliminary Unenforceability Contentions		On or about 40 days after claim construction ruling **<DO NOT PUT IN A DATE>**
28	Accused Infringer makes Final Invalidity Contentions	Patent L.R. 3-6(b)	On or about 50 days after claim construction ruling **<DO NOT PUT IN A DATE>**
29	Accused Infringer makes disclosure relating to willfulness	Patent L.R. 3-8	On or about 50 days after claim construction ruling **<DO NOT PUT IN A DATE>**
30	Accused Infringer makes Final Unenforceability Contentions		On or about 60 days after claim construction ruling **<DO NOT PUT IN A DATE>**

31	Deadline for completion of all fact discovery, which shall be at least 90 days before the final pre-trial conference		On or about 80 days after claim construction ruling **<DO NOT PUT IN A DATE>**
32	Deadline for disclosure of expert testimony on issues for which a party bears the burden of proof	FRCP 26(a)(2) L.R. CV-26(b)	On or about 90 days after claim construction ruling **<DO NOT PUT IN A DATE>**
33	Deadline for disclosure of rebuttal expert testimony	FRCP 26(a)(2) L.R. CV-26(b)	On or about 110 days after claim construction ruling **<DO NOT PUT IN A DATE>**
34	Deadline for late mediation at the Parties' request		
35	Deadline for completion of expert discovery		30 days after rebuttal expert testimony
36	Deadline for objections to other parties' expert witnesses		After 35
37	Deadline for filing dispositive motions, including motions on invalidity and unenforceability, which shall be at least 75 days before the initial pretrial conference		At least 75 days before initial pretrial conference
38	Deadline for filing all *Daubert* motions		Same as 37
39	Deadline for parties to make pretrial disclosures	FRCP 26(a)(3)	At least 30 days before initial pretrial conference

40	Patentee to provide to other parties its information for Joint Final Pretrial Order, Proposed Jury Instruction and Verdict Form		At least 30 days before initial pretrial conference
41	Defendant and Third-parties to Provide to Patentee their information for Joint Final Pretrial Order, Proposed Jury Instruction and Verdict Form		At least 30 days before initial pretrial conference
42	Parties to file Proposed Joint Final Pretrial Order, Proposed Jury Instructions, Joint Verdict Forms and Motions in Limine. Prior to initial pretrial conference, parties shall confer with each other regarding the other party's Motion in Limine, deposition designations, and exhibit and shall submit to the Court in writing any objections they may have to the other party's Motions in Limine, deposition designations, and exhibits.		At least 2 weeks before initial pretrial conference
43	Initial Pretrial Conference and hearing on Motions in Limine if required and hearing on objections to deposition designations and exhibits		At least 2 weeks before final pretrial conference
44	Final Pretrial Conference before Judge David Folsom		

45	Jury Selection before Judge David Folsom		

APPENDIX B

FINAL PRE-TRIAL CONFERENCE DATES*
FOR JUDGE DAVID FOLSOM

March 3, 2008
October 6, 2008
March 2, 2009
October 5, 2009